

GUARANTEE AGREEMENT

dated as of _____, 2000

among

THE EMERGENCY STEEL LOAN GUARANTEE BOARD

and

[THE LENDERS]

and

[THE AGENT], as Agent

Emergency Steel Loan Guarantee Board Guarantee No. []

[MULTIPLE LENDER FORM]

This **GUARANTEE AGREEMENT** (this “Guarantee”) dated as of [], 2000, is made by and among the financial institutions party hereto and identified in the signature pages hereof, their successors and permitted assigns (each, a “Lender”), [], in its capacity as agent for the Lenders, including its successors and permitted assigns in such capacity (the “Agent”),¹ and the Emergency Steel Loan Guarantee Board, an instrumentality of the United States of America (the “Board”).

WHEREAS, the Board was created pursuant to the Emergency Steel Loan Guarantee Act of 1999, Pub. L. No. 106-51 (the “Act”);

WHEREAS, the Act establishes the Emergency Steel Guaranteed Loan Program to be administered by the Board, the purpose of which is to provide guarantees of loans to qualified steel and iron ore companies;

WHEREAS, the Agent, on behalf of the Lenders, has made an application pursuant to the Act dated [] (the “Application”) for the guarantee by the Board of a loan by the Lenders to [] (the “Borrower”), and the Application has received the preliminary approval of the Board as reflected in the Offer of Guarantee issued by the Board and dated [] (the “Offer of Guarantee”), a copy of which is attached hereto as Exhibit A (and which shall be deemed final upon the execution by the Board of this Guarantee);

WHEREAS, the Lenders, Borrower and the Agent have, on the date hereof, entered into a loan agreement (the “Loan Agreement”) in the form attached hereto as Exhibit B;

WHEREAS, the Lenders, Borrower and the Agent have satisfied the conditions to the issuance of this Guarantee set out in the Offer of Guarantee, including, without limitation, the execution and delivery of certain agreements and instruments required to secure Borrower’s obligations under the Loan Agreement; and

WHEREAS, subject to the terms and conditions of this Guarantee, the Board is willing to guarantee to the Lenders the payment of certain of Borrower’s obligations under the Loan Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

SECTION 1. DEFINITIONS AND PRINCIPLES OF CONSTRUCTION

1.1. **Defined Terms**. For the purposes of this Guarantee, the following terms shall have the meanings specified below:

¹ In the event of more than a single Lender, the Agent is to be the Lender which submitted the Application. In the case of a single Lender, the pertinent terms of the Guarantee will be revised by the Board accordingly.

“Guaranteed Percentage” means [] percent ([]%), which is the percentage of the maximum principal amount of the Loan which is represented by the Guaranteed Amount.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Loan” means the credit extended to Borrower by the Lenders under the Loan Agreement.

“Loan Agreement” has the meaning set forth in the recitals hereof and includes any notes issued by Borrower thereunder.

“Loan Documents” means the Loan Agreement, the Security Documents and [list specific documents for each loan].

“Offer of Guarantee” has the meaning set forth in the recitals hereof.

“Payment Default” means any failure of Borrower to pay any amount of principal of the Loan when and as due under the Loan Agreement (including, without limitation, following any acceleration thereunder) which has not been cured within any applicable grace period.

“Payment Demand” has the meaning set forth in Section 3.3.

“Reasonable Costs of Collection” means costs, fees and expenses incurred by the Agent or the Lenders following any Payment Default, including, without limitation, by any of their designees, consultants and attorneys, in connection with maintaining any Security Interest or obtaining any Collection to the extent that such costs and expenses are duly documented, reasonably incurred and reasonable in amount taking into consideration the potential amount of and prospects for success in obtaining any particular Collection as appeared at the time the costs and expenses were incurred in connection with such Collection.

“Recoverable Payment” has the meaning set forth in Section 3.13.

“Regulations” means the federal regulations promulgated under the Act and published at 13 C.F.R. Part 400.

“Security Interests” means all (i) security interests in property, whether real or personal, tangible or intangible, and (ii) guarantees (other than this Guarantee), including security interests in property securing such guarantees, in either case given in connection with the Loan as security for Borrower’s payment obligations under the Loan Agreement.

“Security Documents” means all agreements, instruments, filings, registrations, recordings or other similar documents necessary or required to create, record, perfect, evidence or enforce against the Security Interests, including, without limitation, any common security agreement.

“Termination Event” has the meaning set forth in Section 2.3(c).

“United States” or “U.S.” means the United States of America.

1.2. Principles of Construction

(a) The meanings set forth for defined terms in Section 1.1 or elsewhere in this Guarantee shall be equally applicable to both the singular and plural forms of the terms defined.

(b) Unless otherwise specified, all references in this Guarantee to Sections and Exhibits are to Sections and Exhibits in or to this Guarantee.

(c) The headings of the Sections in this Guarantee are included for convenience only and shall not in any way affect the meaning or construction of any provision of this Guarantee.

(d) In the event of any inconsistency between the terms of this Guarantee and any other Loan Document or the Offer of Guarantee, the terms of this Guarantee shall govern.

(e) A reference to any law includes any amendment or modification of such law, and all regulations, rulings and other laws promulgated under such law.

(f) References to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, and (ii) means such document, instrument or agreement as amended, modified and supplemented from time to time pursuant to the terms thereof and in effect at any given time.

SECTION 2. THE GUARANTEE

2.1. Guarantee. Subject to the terms and conditions set forth in this Guarantee, the Board hereby guarantees to the Lenders the repayment by Borrower of the outstanding and unpaid principal amount of the Loan; provided, however, that (i) in no event shall the liability of the Board under this Section 2 exceed the Guaranteed Amount, and (ii) in connection with any claim by the Agent on behalf of the Lenders for payment under this Guarantee as the result of a Payment Default by Borrower in an amount less than the total principal amount of the Loan, the Board shall be obligated to pay only the Guaranteed Percentage of the defaulted principal amount.

2.2. Coverage of the Guarantee. For the avoidance of doubt, this Guarantee shall not extend to the repayment of any of the following amounts:

(i) any principal amount of the Loan in excess of the Guaranteed Amount or in excess of the Guaranteed Percentage of any defaulted principal amount;

(ii) any interest payable under the Loan Agreement (other than to the extent capitalized under the terms of the Loan Agreement prior to any Default or Payment Default); or

(iii) any penalties, fees, indemnified amounts, costs or expenses payable under the Loan Agreement.

2.3. Termination of Guarantee Obligations. The guarantee obligations of the Board provided in Section 2.1 shall terminate in accordance with the following:

(a) In the event that the Agent fails to make a Payment Demand on the Board within thirty (30) days from the date of any Payment Default, the Board's guarantee obligation with respect to the unpaid principal as to which such Payment Default relates shall automatically terminate; provided, however, that such termination shall be without prejudice to the right of the Agent to demand, and shall not limit the obligation of the Board to make, payment under this Guarantee with respect to any other Payment Default.

(b) The Board's obligations under Section 2.1 shall automatically terminate in the event that:

(i) the Lenders have been repaid the total principal amount of the Loan by Borrower, by the Board or from Collections, or any combination thereof;

(ii) the Board has paid to the Agent for the benefit of the Lenders the Guaranteed Amount;

(iii) the Board has paid to the Agent for the benefit of the Lenders an amount equal to the Guaranteed Percentage of the principal amount of any Payment Default; provided that any termination of the Board's obligations pursuant to this clause (iii) shall relate only to such Payment Default and not to any subsequent or other Payment Default; or

(iv) the Guarantee Fee has not been paid in full by the Borrower, or by the Agent on behalf of the Borrower, when and as required pursuant to Section 2.5.

(c) The Board's obligations under Section 2.1 shall automatically terminate with respect to and to the extent of:

(i) the Agent's interest as a Lender under this Guarantee, in the event that (1) any of the representations and warranties of the Agent under Section 4.1 was incorrect in any material respect when made and such misrepresentation was the result of the Agent's gross negligence or willful misconduct, or (2) the Agent is in breach of any provision or obligation under this Guarantee or under any Loan Document the breach of which would reasonably be expected to have a material adverse affect on the rights or interests of the Board, and (x) such breach was the result of the Agent's gross negligence or willful misconduct and (y) such breach continues unremedied (and is not waived by the Board in accordance with Section 6.6) for a period of thirty (30) days from the day on which the Agent first knew of such breach (whether by reason of written notice from the Board or otherwise);

(ii) the interest under this Guarantee of any Lender in the event that any of the representations and warranties of such Lender under Section 4.2 was incorrect in any material respect when made; and

(iii) the interest under this Guarantee of any Lender which (1) transfers such interest contrary to the provisions of Section 5.6 or (2) obtains any Security Interest contrary to the prohibition set out in Section 5.10.

The foregoing or anything to the contrary contained in this Guarantee notwithstanding, in the event that the Board asserts that any misrepresentation or breach by the Agent or any Lender shall have occurred entitling the Board to terminate such person's interest in the Guarantee pursuant to this Section 2.3(c) (hereinafter a "Termination Event") and such person disputes such assertion by the Board, no termination of such person's interest in the Guarantee pursuant hereto shall be effective until such time as it shall have been finally determined by a court of competent jurisdiction that a Termination Event has occurred. If such a final determination shall have been made that a Termination Event has occurred with respect to any person and such person shall have received any payment under the Guarantee after the occurrence of such Termination Event, such person shall return to the Board promptly following such final determination all such moneys, together with interest thereon at the rate per annum determined in accordance with the provisions of 31 U.S.C. §3717, as amended.

2.4. Revocation of Borrower's Payment. The provisions of clause (i) of Section 2.3(b) notwithstanding, the obligations of the Board shall continue to be binding on the Board with respect to any payment, or any part thereof, by Borrower of principal of the Loan that is rescinded or must otherwise be returned by the Lenders if such rescission or return of payment has been compelled by law as the result of the bankruptcy or insolvency of Borrower, or if such rescission or return of payment is a result of any other law, regulation or decree applicable to Borrower; provided, however, that, to the extent consistent with the standard of care set out in Section 5.9, (i) the Agent shall have pursued diligently any available defenses to such rescission or return, and (ii) neither the Agent nor any Lender shall have taken or failed to take any action resulting in any impairment, release or termination of the rights of the Lenders or the Board in the Security Interests. Notwithstanding the immediately preceding sentence, the Agent or any Lender may, after payment in full of the Loan or any other obligations then due to the Board by Borrower or from Collections, deliver to the Borrower such documents and instruments (including without limitation Uniform Commercial Code termination statements) as may be reasonably requested by the Borrower to release the Security Interests. A Payment Demand in respect of any such returned principal payment must be made by the Agent promptly but in no event later than thirty (30) days after a final and non-appealable order compelling the return of such principal payment.

2.5. The Guarantee Fee. The Agent, on behalf of Borrower, shall pay (or cause the Borrower to pay) to the United States Department of the Treasury a fee in the amount of [] United States dollars (U.S.\$ []) ³ (the "Guarantee Fee"). Payment of the Guarantee Fee is to be made on or before the earlier of (i) the day which is three hundred sixty five days from the date hereof or, if such day is not a Business Day, then the next succeeding Business Day, and (ii) the day on which the first Payment Demand, if any, is made. Payment of the Guarantee Fee shall be made by wire transfer in immediately available funds to such bank and account as is designated for such purpose in writing by the Board.

³ The Guarantee Fee is equal to one-half of one percent (0.5%) of the maximum principal amount of the Loan, whether or not drawn.

2.6. Waiver of Conditions. The Board hereby waives diligence, presentment, protest and any requirement, as a condition to the Board's obligations under Section 2.1, that the Agent or any Lender exhaust any right or take any action against or give any notice to the Borrower, any party to a Security Document, or the Board other than such notices, actions and conditions as are expressly provided under this Guarantee.

SECTION 3. CLAIM PROCEDURES

3.1. Notice of Payment Default. In addition to and irrespective of any notice required to be given under Section 5.3, the Agent shall notify the Board in writing of any Payment Default, such notice to be given immediately upon the occurrence of such Payment Default, and in any event within three Business Days thereof.

3.2. Acceleration. In determining, following any Payment Default or Default, whether to accelerate the maturity of any amounts outstanding under the Loan Agreement or otherwise to declare such amounts to be immediately due and payable, the Agent and the Lenders shall act at all times in accordance with the standard of care and diligence required under Section 5.9; it being understood that any acceleration based upon a Payment Default, the failure of the Borrower to pay interest when due (after giving effect to all applicable grace periods) or the occurrence of a bankruptcy or insolvency event with respect to the Borrower, shall be conclusively presumed consistent with such standard.

3.3. Demand for Payment. Following any Payment Default, the Agent shall be entitled to make a demand, on behalf of the Lenders, in writing to the Board for payment under this Guarantee in respect of the defaulted principal (a "Payment Demand"). Any Payment Demand (i) shall be made not later than thirty (30) days from the date of the Payment Default, (ii) shall identify the amount and due date of the defaulted payment of principal and the outstanding amounts of principal and interest under the Loan, (iii) shall describe briefly, to the best of the Agent's knowledge at such time after due inquiry consistent with the standard of care set forth in Section 5.9, the circumstances leading to the Payment Default, including, without limitation, the nature of any precipitating Default, whether an acceleration has occurred, and whether a bankruptcy proceeding has been instituted or threatened, and (iv) shall be accompanied by a copy of each of the Loan Documents, this Guarantee and, to the extent not already provided to the Board pursuant to the last sentence of Section 5.3, all notices and other written correspondence with the Borrower or any other Lender relating to the Payment Default and any precipitating Default.

3.4. Additional Information. Following any Payment Demand being made, the Agent shall furnish to the Board promptly upon request from the Board and, in any event, not later than ninety (90) days from the date of such request, each of the following:

(a) a written, detailed and reasonable plan for the partial or complete foreclosure on and liquidation of the Security Interests, including, without limitation, detailed estimates by the Agent of the time and Reasonable Costs of Collection anticipated to be necessary in order to carry out such plan; and

(b) a written, detailed and reasonable work-out plan, if such a plan is feasible, for the continued operation of the Borrower calculated, in Agent's judgment, to assure the best prospect for repayment of principal and interest under the Loan without partial or complete foreclosure and liquidation of the Security Interests, including, without limitation, detailed estimates of the time and expense required for such work-out and an assessment of the risks to the Lenders and the Board associated therewith relative to such risks associated with complete foreclosure and liquidation; and, if any partial foreclosure and liquidation is a part of such proposed work-out plan, a detailed estimate of the time and Reasonable Costs of Collection anticipated by the Agent to be required to effect such partial liquidation. The delivery of any such plan to the Board shall not be deemed to be an endorsement or to indicate any credit approval of any such plan or the action contemplated thereby by the Agent or any Lender, nor shall the delivery of any such plan obligate the Agent or any Lender to implement or carry out any of the actions contemplated thereby (which implementation, if any, shall be governed by the provisions of Section 3.8). Neither the Agent nor any of the Lenders makes or shall be deemed to make any representation as to the likelihood of success of any such plan or the value to be obtained from the proceeds of any of the Security Interests. Nothing in this Section 3.4 shall be construed as limiting the obligations of the Agent or any of the Lenders under Section 3.8.

3.5. Conclusive Presumption Regarding Demand. By making a Payment Demand under Section 3.3, the Agent shall be conclusively deemed to have certified, with full knowledge of the provisions of 18 U.S.C. §1001 and 31 U.S.C. §3729 including, without limitation, the provisions thereof for penalties and damages, to the Board that it has fully and timely complied with all material provisions and obligations under this Guarantee and the Loan Documents, that the amount demanded is past due and owing by Borrower under the Loan Agreement, and that the demand is properly made and required to be satisfied by the Board under the terms of this Guarantee.

3.6. Board's Right to Investigate. Following receipt of any Payment Demand, the Board or, on its behalf, the Office of the Inspector General of the Department of Commerce, the Comptroller General of the United States, and any of their duly authorized representatives or designees, may conduct an audit and investigation of compliance by the Agent and the Lenders with all material provisions and obligations under this Guarantee. The Agent and the Lenders shall cooperate fully and diligently with any such audit and investigation in accordance with the requirements of Section 5.8.

3.7. Payment By the Board. Within sixty (60) days from receipt by the Board of a Payment Demand, the Board shall pay to the Agent for the benefit of the Lenders the amount required to be paid under Section 2.1 in respect of the unpaid principal amount under the Loan to which the Payment Demand relates. Such payment shall be made irrespective of whether any audit and investigation under Section 3.6 or Section 5.8 is pending or whether information remains to be furnished by the Agent under Section 3.4; provided, however, that payment shall not be made to the extent that the Board's payment obligation has terminated in accordance with the terms of Section 2.3. Payment shall be made by wire transfer in immediately available funds to the bank and account designated by the Agent for such purpose.

3.8. Foreclosure and Liquidation. The rights under the Loan Documents to foreclose on and liquidate the Security Interests shall be exercised by the Agent and the Lenders under the

terms of the Loan Documents in accordance at all times with the standard of care and diligence required under Section 5.9. In so doing, the Agent and Lenders shall take into consideration the feasibility of and risks associated with any work-out plan referred to in Section 3.4(b). The Board shall participate in any determination of whether to foreclose and liquidate solely by reason of, and to the extent of, any subrogation to and assignment of such right to participate under the terms of the Loan Documents in accordance with the provisions of Section 3.11.

3.9. Application of Collections. Collections shall be applied as follows:

first, to the Reasonable Costs of Collection;

second, to interest accrued and unpaid under the Loan Agreement on a pro rata basis in accordance with the parties' respective interests therein, it being understood that, to the extent the Board has made payment to the Lenders under this Guarantee in respect of unpaid principal of the Loan which has not been recovered through Collections, interest on the amount of, and from the time of, such payment shall accrue to the benefit of the Board at the rate payable by the Borrower on past-due principal amounts under the Loan Agreement;

third, to principal then unpaid and past due under the Loan Agreement on a pro rata basis in accordance with the parties' respective interests therein taking into account any payment by the Board under this Guarantee in respect of unpaid principal of the Loan; and

fourth, to any other unpaid and past due obligations of Borrower under the Loan Agreement on a pro rata basis in accordance with the parties' respective interests therein.

The foregoing application of Collections shall be solely as between the Agent, the Lenders and the Board under this Guarantee and, to the extent the two may be inconsistent, shall not be construed as affecting in any respect the application of funds under the terms of the Loan Agreement as between Borrower and the Lenders (and the Board to the extent it is assigned or subrogated to any of the Lenders' rights and interests under the Loan Agreement). Collections shall not be applied to any costs, fees or expenses incurred by the Agent or the Lenders in effecting or attempting to effect Collections which are not Reasonable Costs of Collection, and the Agent or the Lenders shall have no right of contribution, indemnification, reimbursement or recovery therefor against the Board, except that Collections may be applied to such costs, fees and expenses under the fourth priority set out above to the extent payable by Borrower under the Loan Agreement.

3.10. Accounting and Reports; Payment of Collections. While any foreclosure and liquidation is being conducted, or any work-out plan is being pursued, by the Agent or the Lenders, they shall account to the Board for all Collections realized, and the Agent shall provide the Board, within thirty (30) days from the end of each calendar quarter, with a report on (i) the progress of such foreclosure and liquidation or work-out plan, (ii) the disposition of Security Interests, (iii) the amount of each Collection realized in such calendar quarter and the Reasonable Costs of Collection incurred in connection with each such Collection and (iv) any additional actions or proceedings considered necessary for the successful completion of such foreclosure and liquidation or work-out plan. Within sixty (60) days from the end of each calendar quarter following any Payment Demand, the Agent and the Board shall agree upon the amount of

Collections realized during such prior quarter which is required to be paid to the Board in order that the application of Collections provided for under Section 3.9 be given effect, on a cumulative basis, as of the end of such prior quarter, and such amount shall be paid on or before such sixtieth day or, if such day is not a Business Day, on the next succeeding Business Day, by wire transfer in immediately available funds to such account as the Board may designate in writing for such purpose. The amounts payable to the Board shall bear interest from the date of Collection until the date of payment of such amounts to the Board at the Federal Funds Rate.

3.11. Subrogation and Assignment. Upon any payment by the Board to the Agent for the benefit of the Lenders under this Guarantee, the Board shall become subrogated to, and the Lenders shall be deemed to have assigned to the Board, without recourse and without need of any further action, such right, title and interest in, to and under the Loan, the Security Interests and the Loan Documents as is equivalent to the Board's right to receive Collections under Sections 3.9 and 3.10 and, to such extent, the Board shall have the right to enforce or participate in any claim (including, without limitation, any claim in bankruptcy), right or remedy that the Agent or the Lenders then have or may thereafter acquire against the Borrower and the Security Interests under the Loan Documents and shall be entitled to the benefit of and any right to participate in any Security Interests and Collections then or thereafter held or acquired by the Agent or the Lenders. The Agent and each of the Lenders shall, upon request by the Board, execute and deliver such documents and take such other actions as may be necessary to evidence or give effect to such subrogation and assignment.

3.12. Board Payment Does Not Discharge Borrower. Any statute or judicial decision to the contrary notwithstanding, no payment by the Board to the Agent on behalf of the Lenders under this Guarantee shall reduce, discharge, satisfy or terminate any obligation of Borrower under any of the Loan Documents or any obligation of any party to the Security Documents.

3.13. No Waiver of Recovery by the Board. No payment made by the Board under this Guarantee to the Agent on behalf of the Lenders shall constitute a waiver by the Board of any of the Board's claims, rights or defenses against the Agent or any Lender relating thereto if at the time such payment was made the obligations of the Board under Section 2.1 were subject to termination under Section 2.3 (any such payment, a "Recoverable Payment"), it being understood and agreed that, in the case of a termination under Section 2.3(a) or Section 2.3(b), any recovery by the Board from the Agent or a Lender shall be proportionate to the pro-rata share of the Agent (in its capacity as a Lender) or such Lender, as the case may be, of the aggregate amount of such Recoverable Payment. Any such recovery by the Board shall be with interest thereon calculated from the date of such payment by the Board until recovered by the Board at the rate per annum determined in accordance with the provisions of 31 U.S.C. § 3717, as amended.

SECTION 4. REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of the Agent. The Agent represents and warrants to the Board as follows:

(a) Eligibility. To the best of its knowledge following due inquiry consistent with the standard set out in Section 5.9, each of the Lenders is an Eligible Lender.

(b) Bring-down of Representations. All of the certifications, representations and warranties of the Agent set forth in writing in the Application, and the written information and documentation provided by the Agent with the Application, including, without limitation, with respect to the Borrower or the Security Interests, were when made or given, and are true, correct and complete in all material respects to the best of the Agent's knowledge following due inquiry consistent with the standard set out in Section 5.9 as of the date hereof, except as the Agent may have otherwise notified the Board in writing prior to the date hereof.

(c) No Material Adverse Change. As of the date hereof, and except as the Agent may have otherwise notified the Board in writing prior to the date hereof, the Agent, following due inquiry consistent with the standard set out in Section 5.9, has not determined that there has occurred any material adverse change since the submission to the Board of the Application in the value of the Security Interests or in the business, operations, assets, liabilities (contingent or otherwise) or financial condition of the Borrower.

(d) Compliance with Conditions. The Agent, on behalf of the Lenders, has complied with all conditions to the issuance by the Board of this Guarantee as set out in the Act, Regulations and in all material respects with the conditions set out in the Offer of Guarantee. To the best of the Agent's knowledge following due inquiry consistent with the standard set out in Section 5.9, and except as the Agent may have otherwise notified the Board in writing prior to the date hereof, the Borrower has complied in all material respects with all conditions to the making of the Loan as required under the Loan Agreement (it being expressly understood, however, that this representation and warranty does not mean that all conditions precedent to the making of the initial disbursement thereunder are satisfied as of the date hereof).

(e) Administration of the Loan. The Agent has the ability to administer the Loan, perform its obligations under the Loan Documents and, subject to any requisite instruction from the Lenders and to any qualifications expressed in the opinions of law addressed to the Board and delivered as a part of the Loan Documents, exercise the Lenders' rights and remedies under the Loan Documents, including, without limitation, conducting any foreclosure on and liquidation of the Security Interests, in full compliance with the standard set out in Section 5.9, and without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by this Guarantee, or where the Board, in its sole discretion, elects to provide the same.

(f) Security Interests. With respect to the Security Documents and the Security Interests, the Agent has taken or caused to be taken all actions necessary, consistent with the standard set out in Section 5.9, to perfect the Security Interests created under the Security Documents, including, without limitation, the obtaining of signatures, the giving of notices, and the making of filings with governmental agencies, except that nothing here shall constitute a representation or warranty that the Agent has taken actions to perfect the Security Interests created under the Security Documents if and to the extent that the opinions of law delivered as a part of Loan Documents indicate that such perfection is not possible.

4.2. Representations and Warranties of the Lenders. Each Lender, including the Agent, represents and warrants to the Board as follows:

(a) Eligibility. It is an Eligible Lender.

(b) Information. All of the certifications, representations and warranties of the Agent contained in the Application, and the written information and documentation provided by the Agent with the Application, in each case to the extent relating to such Lender, were when made, and are as of the date hereof, true, correct and complete in all material respects.

(c) Security Interests. It has no Security Interest other than the Security Interests created under the Security Documents.

(d) Lender's Interest. It's percentage interest in the Loan and this Guarantee is as specified in []⁴ and it has no additional or different interest in either thereof.

SECTION 5. ADDITIONAL UNDERTAKINGS OF AGENT AND LENDERS

In addition to their other obligations under this Guarantee, the Agent and each of the Lenders agrees as follows:

5.1. Appointment and Role of the Agent. Each Lender hereby irrevocably appoints and designates [] as the Agent of such Lender under this Guarantee, and each Lender hereby irrevocably authorizes the Agent to take such action, exercise such powers, and perform such duties on its behalf as are required of the Agent by the terms of this Guarantee, together with such other actions, powers and duties as are incidental thereto. It is expressly understood and agreed by each Lender that, irrespective of any indemnities or other agreements between the Lenders and the Agent set out in the Loan Agreement, each Lender shall be bound under this Guarantee by all actions of the Agent, and failures of the Agent to act, under or in connection with this Guarantee, which actions and failures to act the Board shall be entitled to rely upon as so binding the Lenders. In the performance of its obligations under this Guarantee, the Board shall be entitled to deal solely with the Agent and shall not be bound by or obligated to act in response to any action of or communication from any Lender other than the Agent acting in its capacity as such. No individual Lender, other than the Agent acting in its capacity as such, shall have the right to make demand of or receive payment from the Board under this Guarantee.

5.2. Register. The Agent shall establish and maintain a register for recording with respect to the Loan the date and amount of (i) each payment of principal and interest made by or on behalf of the Borrower, (ii) each payment made by the Board hereunder, and (iii) each Collection, as well as the application of each such Collection in accordance with the terms hereof. At the Board's request, the Agent shall make such register, or a copy thereof certified by the Agent as true, complete and correct, available to the Board. The Agent shall maintain such register until such time as the guarantee obligation of the Board has terminated pursuant to Section 2.3(b) and, upon such termination, the Agent shall deliver to the Board a copy of the register, certified by the Agent as a true, complete and correct copy.

⁴ Reference will be made to such Loan Document or schedule thereto as identifies specifically each of the Lenders respective interests, including in particular, each Lender's interest in the guaranteed and unguaranteed portions of the Loan.

5.3. Monitoring; Notices. The Agent shall monitor Borrower's performance of its obligations and observance of its covenants under the Loan Documents. The Agent shall notify the Board promptly, but in no event later than five Business Days after receipt of knowledge, of the following: (i) the occurrence of any Default; (ii) the deterioration, downgrading or negative reassessment of any risk rating assigned internally by the Agent or any Lender to the Loan, and the reasons for such deterioration or downgrading; (iii) any determination by the Agent or any Lender that there has occurred any material adverse change in the value of the Security Interests or in the business, operations, assets, liabilities (contingent or otherwise) or financial condition of the Borrower; (iv) the occurrence of any default by Borrower under any of Borrower's other indebtedness or agreements which default the Agent reasonably determines could affect materially and adversely Borrower's ability to repay its indebtedness under the Loan Agreement; (v) the receipt of any prepayment made by or on behalf of Borrower under the Loan Agreement; (vi) the making of any claim for the rescission or return of any payment previously made by Borrower to Lender under the circumstances described in Section 2.4; (vii) the breach by any party to a Security Document of a material obligation thereunder; (viii) the breach by the Agent or any Lender of any of its obligations under this Guarantee or under any Loan Document; and (ix) the acceleration of any amounts outstanding under the Loan Agreement. In addition, the Agent shall concurrently provide the Board with a copy of any written notice or information that the Agent distributes to the Lenders generally under the Loan Documents.

5.4. Other Information. In addition, the Agent shall provide the Board with each of the following: (i) within fifteen (15) days from receipt by the Agent under the terms of the Loan Agreement, Borrower's annual financial statements, which shall be prepared and presented in accordance with generally accepted accounting standards and audited by an independent certified public accountant or accounting firm in accordance with generally accepted auditing procedures (except for such deviations from generally accepted auditing practices as are expressly noted by such independent certified public accountants and with which such independent certified public accountants shall concur); (ii) within thirty (30) days from receipt by the Agent under the terms of the Loan Agreement following the end of each of Borrower's fiscal years during the term of the Loan, projected balance sheets and statements of cash flow and income as of the end of each subsequent year any part of which is within the term of the Loan as prepared by Borrower; (iii) within fifteen (15) days following the end of each calendar quarter within the term of the Loan, a Quarterly Compliance Statement, in the form of Exhibit C, completed by the Agent and executed by its duly authorized representative; and (iv) within fifteen (15) days thereof, notice of any amendment of, or waiver, release or covenant not to sue under, any provision of any of the Loan Documents which is permitted under Section 5.5 without the consent of the Board. It is expressly understood and agreed that the right of the Board to receive the information and notices required to be delivered under Section 5.3 and under this Section 5.4 and their receipt by the Board shall not create any duty or impose any obligation on the Board to take any action in response thereto, and that the obligation of the Agent to deliver such information and notices and their delivery by the Agent shall in no way change, lessen or discharge any other duty or obligation of the Agent or the Lenders imposed by this Guarantee, by the Loan Documents or by law.

5.5. Prohibited Amendments. The Agent and the Lenders shall not, without the Board's prior written consent, agree to or permit any amendment of, or waiver, release or covenant not to sue under, any provision of any of the Loan Documents, other than waivers with

respect to administrative matters which would not reasonably be expected to have a material adverse effect on the rights and interests of the Lenders or the Board. The Board shall act promptly in response to any request from the Agent for such permission. The failure of the Board to act upon or otherwise respond to any such request within 10 Business Days after the delivery thereof shall be deemed to constitute the Board's approval of such request. The Agent and the Lenders shall not, without the prior written consent of the Board, capitalize any interest or permit the Borrower to make any draw under the Loan Agreement in the event there has occurred a Default of which the Agent has knowledge or Payment Default. Any agreement or other action by the Agent or the Lenders approved or deemed to have been approved by the Board pursuant to the terms of this Section 5.5 shall be conclusively presumed consistent with the standard set out in Section 5.9.

5.6. Transfer of Rights, Duties and Responsibilities. Neither the Agent nor any Lender shall assign, convey, sell or otherwise transfer any of its rights or delegate any of its obligations under any of the Loan Documents or under this Guarantee without the prior written consent of the Board, which may be granted in the Board's sole discretion and, in any event, only to an Eligible Lender with respect to one hundred percent (100%) of the Agent's or any Lender's rights and obligations under the Loan Documents and this Guarantee; provided, however, that nothing herein is intended to limit the right of any Lender (i) to effect any transfer, enter into any agreement, or take any action in the circumstances, to the extent, and having the effect permitted under Section 400.210(c) or Section 400.214 of the Regulations, or (ii) to pledge its interests in the Loan Documents and the Guarantee to any Federal Reserve Bank. Any Lender entering into any transfer, agreement or action referred to in clause (i) above, or the Agent following receipt of notice thereof from such Lender, shall promptly notify the Board in writing of the terms of and parties to such transfer, agreement or action and shall supply the Board with copies of the relevant documents. In no event shall any party (other than the Lender) to any such transfer, agreement or action (other than a transfer pursuant to Section 400.210(c)(1) of the Regulations) be deemed a third-party beneficiary under this Guarantee or have any claim or right of action against the Board, nor shall any such transfer, agreement or action diminish or alter in any way the obligations of the Agent and the Lenders under this Guarantee or (other than in the case of a transfer under Section 400.210(c)(2) of the Regulations) the Loan Documents. It is expressly understood that the Board's consent to the assignment of the Agent's rights and obligations under the Loan Documents and this Guarantee shall not be withheld or delayed unreasonably in circumstances where the Agent has failed to perform its obligations or observe any covenant under any Loan Document or this Guarantee, or threatened to do so, and all requisite action has been taken by the Lenders under the Loan Agreement for the replacement of the Agent, both in its capacity as Agent and Lender, with another Eligible Lender. The foregoing provisions of this Section 5.6 notwithstanding, each of the Lenders, other than the Agent, shall be free to assign its rights under and interests in the Loan Documents in the event that the obligations of the Board under Section 2.1 have terminated in their entirety in accordance with Section 2.3(b).

5.7. Indemnification. In addition to the Board's rights under Section 3.13 to recover any Recoverable Payment, in the event that (i) the Agent or any Lender fails to perform any of its obligations or to observe any of its covenants under this Guarantee or fails to perform any material obligations or covenants under any Loan Document, or (ii) any representation or warranty of the Agent or any Lender proves to have been incorrect in any material respect when made, then the Agent or such Lender, as the case may be, shall be liable to the Board for all

actual and direct damages suffered and costs incurred by the Board as the result thereof, and shall indemnify the Board for such damages and costs (including, without limitation, counsel fees and expenses incurred by the Board in enforcing its rights under this Section 5.7). The Board may enforce its rights to indemnification hereunder, and pursue all remedies available with respect thereto, in any court of competent jurisdiction. Anything to the contrary contained herein notwithstanding, the obligation of the Agent and the Lenders to indemnify the Board shall survive the termination of this Guarantee and the payment of all or any portion of the Guaranteed Amount. To the extent that any claim by the Board involves the recovery of a Recoverable Payment, the provisions of Section 3.13, and not this Section 5.7, shall apply to such claim.

5.8. Audit and Investigation; Cooperation. In addition to the rights of the Board under Section 3.6, in the event that the Board at any time has reason to believe that there has occurred any breach, negligence, fraud or misrepresentation on the part of the Borrower, the Agent or any Lender in connection with the Application, the Offer of Guarantee, the Loan, the Loan Documents or this Guarantee, then the Board or, on its behalf, the Office of the Inspector General of the Department of Commerce, the Comptroller General of the United States, and any of their duly authorized representatives or designees, shall be entitled to conduct an audit or investigation relating thereto. The Agent and each Lender shall cooperate fully and diligently with any such audit or investigation conducted under this Section 5.8 or under Section 3.6. Such cooperation shall include, without limitation, providing promptly upon request, and in any event not later than thirty (30) days following such request, each of the following: (i) the originals (at such time or times and at such place or places as shall be reasonable) or, if so requested, copies of all relevant books, documents, correspondence, papers, and other records (including, without limitation, records stored electronically) relating to the Application, the Offer of Guarantee, the Loan, the Loan Documents, this Guarantee or the Loans in the possession or control of the Agent or Lender; (ii) the names and business and residence addresses of all persons (including, without limitation, all employees and officials of the Agent or Lender) who prepared or supervised any preparation of, or who maintained or supervised any maintenance of, any of the aforementioned records, and of all persons who participated, in whole or in part, in any matter referred to or reflected in any of such records, or in any other matter relating to or connected with the Application, the Offer of Guarantee, the Loan, this Guarantee or any of the Loan Documents; and (iii) to the extent able to do so, for individual interview at such time and place as shall be reasonable, each of the persons specified in clause (ii) above. For the avoidance of doubt, this Section 5.8 shall not be construed to require any affiliate of the Agent or of any Lender that is not the Agent or a Lender, and is not acting on behalf of either thereof in connection with the Loan or the Guarantee, to provide such books, documents, correspondence, papers and other records.

5.9. Duty of Care and Diligence. The Agent and each Lender shall exercise its rights and perform its obligations under the Loan Documents and under this Guarantee using at all times such care and diligence as would be used by a banking institution acting in good faith and in a commercially reasonable manner. Any and all actions, approvals, determinations, permissions, acceptances, requirements, or recommendations to be taken, made, given, imposed or reached by the Agent under this Guarantee shall be so taken, made, given, imposed or reached in conformity with the standard of care and diligence specified in the preceding sentence hereof. The foregoing and anything else contained in this Guarantee or the Regulations notwithstanding, nothing in this Guarantee shall create or be deemed to create any fiduciary relationship between

the Agent or any Lender and the Board, and to the extent any such fiduciary relationship might otherwise exist, it is expressly waived and disclaimed by the Board.

5.10. Maintenance of Security. The Agent and the Lenders shall take all actions and exercise all rights under the Loan Documents required or advisable, consistent with the standard of care set out in Section 5.9, to provide for the care, preservation, maintenance and continuation of the Lenders' and the Board's rights in, to and under the Security Interests. No Lender shall obtain any Security Interest other than Security Interests created under the Security Documents or in which all other Lenders and the Board share equally and ratably in accordance with their interests in the Loan.

5.11. Written Recommendations. Without limiting the scope of the application of the duty of care and diligence set forth in Section 5.9, the Agent shall, exercising such standard of care and diligence, timely advise the Board of its position, in its individual capacity as a Lender, in connection with each event or matter with respect to which any consent, acceptance, approval, determination or decision is required or permitted to be made by the Agent or the Lenders and the Board, or solely by the Board, pursuant to the terms of this Guarantee.

5.12. Authorized Representatives. The Agent shall, as necessary from time to time, deliver to the Board evidence, in the form of an officer's certificate (including specimen signatures), of the authority of each person authorized to act as on behalf of the Agent in the performance of its obligations under this Guarantee. The Board may rely on such evidence of authority provided by the Agent, and the Board shall not be required to make any further inquiry with respect to the matters stated therein. The Agent and the Lenders shall be irrevocably bound by each notice or other document delivered under this Guarantee which is purportedly executed on behalf of the Agent in a manner consistent with such evidence of authority.

SECTION 6. MISCELLANEOUS

6.1. Governing Law. This Guarantee shall be governed by and construed in accordance with the federal law of the United States, it being understood and agreed that, to the extent applicable federal law may require reference to state law, then reference shall be made to the law of the State of New York, irrespective of the domicile of the Agent, any Lender, or Borrower.

6.2. Waiver of Jury Trial. For the purposes of this Guarantee, each party hereto knowingly, voluntarily and intentionally waives any rights it may otherwise have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with, this Guarantee.

6.3. Notices. All notices given hereunder shall (i) be in writing, (ii) include the applicable Board guarantee number, (iii) be delivered by overnight courier, personal delivery or telecopy with simultaneous mailing, (iv) be addressed to the Agent or the Board at its address or telecopier number set forth under its name on the signature pages of this Guarantee, (v) be deemed to be given for the purposes of this Guarantee on the day that such notice is received by the intended recipient thereof, and (vi) be effective as to each of the Lenders upon delivery by the Board to the Agent in accordance herewith.

6.4. Benefit of Agreement. Subject to Section 5.6, this Guarantee shall be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.

6.5. Entire Agreement. This Guarantee contains the entire agreement among the parties hereto regarding the subject matter hereof. In the event that any term of any of the Loan Documents conflicts with any term of this Guarantee, the terms and provisions of this Guarantee shall control to the extent of such conflict.

6.6. Amendment or Waiver. This Guarantee may not be amended or otherwise modified except in writing signed by the Board and the Agent, acting on behalf of the Lenders, and no provision hereof may be waived without the prior written consent of whichever of the Board or the Agent, on behalf of the Lenders, is to be bound thereby.

6.7. Severability. To the extent permitted by applicable law, the illegality or unenforceability of any provision of this Guarantee shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Guarantee.

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee to be duly executed and delivered as of the date first above written.

**THE EMERGENCY STEEL LOAN
GUARANTEE BOARD**, an instrumentality of the
United States of America

By: _____
(Signature)

Name: _____
(Print)

Title: _____
(Print)

Attention:

Address:

Telephone:

Fax:

[AGENT IN ITS CAPACITY AS AGENT]

By: _____
(Signature)

Name: _____
(Print)

Title: _____
(Print)

Attention:

Address:

Telephone:

Fax:

[AGENT IN ITS CAPACITY AS LENDER]

By: _____
(Signature)

Name: _____
(Print)

Title: _____
(Print)

Attention:

Address:

Telephone:

Fax:

[LENDER]

By: _____
(Signature)

Name: _____
(Print)

Title: _____
(Print)

Attention:

Address:

Telephone:

Fax:

ACKNOWLEDGEMENT AND AGREEMENT OF BORROWER

[], the Borrower under the Loan Agreement, hereby acknowledges that the Board is issuing this Guarantee to the Lenders in support of the Loan in reliance on, inter alia, the representations, warranties and agreements of Borrower under the Loan Documents and the information relating to Borrower and the Security Interests contained in the Application. Borrower further acknowledges that, any statute or judicial decision to the contrary notwithstanding, no payment by the Board to the Agent on behalf of the Lenders under this Guarantee shall reduce, discharge, satisfy or terminate any obligation of Borrower under any of the Loan Documents or any obligation of any party to the Security Documents.

Borrower represents and warrants to the Board that, as of the date hereof: (i) Borrower is eligible under the terms of the Act and the Regulations for a loan benefiting from this Guarantee; (ii) all of the certifications, representations and warranties of the Agent contained in the Application or the Guarantee and relating to Borrower or the Security Interests, and the information and documentation provided by the Agent with the Application relating to Borrower or the Security Interests, were when made, and are as of the date hereof, true, correct and complete in all material respects; (iii) Borrower has complied with all conditions to the issuance by the Board of this Guarantee as set out in the Act, Regulations and Offer of Guarantee; (iv) as of the date hereof, and except as otherwise disclosed in writing to the Board prior to the date hereof, there has been no material adverse change since the submission to the Board of the Application in the value of the Security Interests or in the business, operations, assets, liabilities (contingent or otherwise), prospects, or financial condition of the Borrower; and (v) Borrower has complied with all conditions to the making of the Loan as required under the Loan Agreement (it being expressly understood, however, that this representation and warranty does not mean that all conditions precedent to the making of the initial disbursement thereunder are satisfied as of the date hereof). Borrower further represents, warrants and covenants to the Board that all property, if any, acquired, improved or derived from the proceeds of the Loan will be property with respect to which the Lenders and the Board will have, equally and ratably in accordance with their interests in the Loan, a perfected and enforceable first priority Security Interest (subject only to usual qualifications of law).

Borrower hereby consents to the payment of the Guarantee Fee by the Agent on Borrower's behalf when and as required under Section 2.5. Borrower hereby agrees that it shall (a) submit to and cooperate with (i) an audit of its books and records annually during the term of the Loan if so requested by the Board, such audit to be conducted at Borrower's expense by the General Accounting Office or such other independent auditor as may be acceptable to the Board in its sole discretion and (ii) any other audit or investigation conducted in accordance with

Section 3.6 or Section 5.8, and (b) provide the Agent in a timely manner with all documentation and information necessary for the Agent to satisfy its reporting and notice obligations to the Board under Sections 5.3 and 5.4 of this Guarantee.

[BORROWER]

By: _____
(Signature)

Name: _____
(Print)

Title: _____
(Print)

[MULTIPLE LENDER FORM]

**EXHIBIT A
OFFER OF GUARANTEE**

[MULTIPLE LENDER FORM]

**EXHIBIT B
LOAN AGREEMENT**

[MULTIPLE LENDER FORM]

EXHIBIT C
FORM OF QUARTERLY COMPLIANCE STATEMENT

[MULTIPLE LENDER FORM]

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